

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LARRY HALL, JR.,
Plaintiff,

Civil Action No. 1:13-cv-509
Weber, J.
Litkovitz, M.J.

vs.

PATRICK R. DONAHOE
POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,
Defendant.

**REPORT AND
RECOMMENDATION**

This matter is before the Court on the motion to dismiss the complaint filed by defendant Patrick R. Donahoe, Postmaster General, United States Postal Service. (Doc. 10). Defendant moves the Court pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to dismiss the original pro se complaint plaintiff filed in this action on August 12, 2013. (Doc. 3).

After the motion to dismiss was filed, counsel entered an appearance and filed an amended complaint on behalf of plaintiff on July 31, 2014. (Doc. 21). The amended complaint “supersedes the original complaint and is the ‘legally operative complaint’ in this matter.” *Scuba v. Wilkinson*, No. 1:06cv160, 2006 WL 2794939, at *2 (S.D. Ohio Sept. 27, 2006) (citing *Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000)). Because the amended complaint replaces the original complaint, defendant’s motion to dismiss the original complaint is moot. See *Scuba*, 2006 WL 2794939, at *2. The motion to dismiss the original complaint should therefore be denied on this ground. *Id.*

IT IS THEREFORE RECOMMENDED THAT:

Defendant’s motion to dismiss the original complaint (Doc. 10) be **DENIED** as moot.

Date: 8/4/14



Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), **WITHIN 14 DAYS** after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. This period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based in whole or in part upon matters occurring on the record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon, or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections **WITHIN 14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).